STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 15, 2004
v	No. 246113 Van Buren Circuit Court
CONNIE MARIE HENLEY, Defendant-Appellant.	LC No. 02-012708-FH

Before: Hood, P.J., and Donofrio and Borrello, JJ.

PER CURIAM.

Defendant appeals her jury conviction of accessory after the fact to a felony, MCL 750.505. Defendant was sentenced to twenty-four months probation, the first six months in the county jail for the conviction. Because the trial court acted within its discretion on the motion to suppress evidence with respect to the "knock and announce" statute, MCL 764.21, we affirm.

A felony arrest warrant was issued in January 1999 for defendant's son. In March 2002, police executed the arrest warrant at defendant's home after receiving a tip that he was hiding in defendant's home under a trap door in the floor of the home. The police did not obtain a search warrant before entering defendant's home. They announced that they had a search warrant, waited 3 to 5 seconds, then entered and found her son under a trap door in the master bedroom and within the crawlspace.

The sole issue on appeal is whether the trial court improperly refused to suppress the evidence of defendant's son's presence in defendant's mobile home during the execution of an outstanding arrest warrant. When considering a motion to suppress evidence, this Court reviews a trial court's findings for clear error. *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000).

Defendant's constitutional rights protect her against unreasonable searches and seizures and require that a warrant be issued, describing the person or places to be searched and the things to be seized. US Const, Am IV. Michigan's equivalent to the Fourth Amendment is found in the Michigan Constitution at article 1, section 11. Evidence obtained during an unconstitutional search can be suppressed under the exclusionary rule. *People v Stevens*, 460 Mich 626, 633; 597 NW2d 53 (1999). Defendant's first contention is that the evidence should be suppressed because the police failed to comply with the "knock-and-announce" rule. Defendant's second contention

is that the evidence should be suppressed because the police needed a search warrant to enter the mobile home because it was not defendant's son's residence.

Even when law enforcement officers have a warrant, they must comply with the "knock-and-announce" rule, MCL 764.21, which is defined as follows:

> A private person, when making an arrest for a felony committed in his or her presence, or a peace officer or federal law enforcement officer, when making an arrest with a warrant or when making a felony arrest without a warrant as authorized by law, may break open an inner or outer door of a building in which the person to be arrested is located or is reasonably believed to be located if, after announcing his or her purpose, he or she is refused admittance.

Defendant asserts that the police failed to comply with the knock-and-announce rule because no one knocked on the door to the home, instead they only announced "police search warrant," and then used force to gain entry without permission. We disagree. First, police announced their presence, and defendant admitted hearing the announcement of police within three to five seconds before entering. Second, the time was sufficient for the fugitive felon to get into the master bedroom and get into the crawl space through a trap door in the floor of the bedroom. Violation of the knock-and-announce rule does not require suppression of the evidence because Michigan has adopted the "inevitable-discovery" exception to the exclusionary rule. *Stevens*, *supra* at 643. None of the police's legal tools were dependent on any constitutional violation because they had an arrest warrant and a reasonable belief that defendant's son was at his last known address. *Id*. at 638. The police's execution of the warrant and the discovery were truly inevitable because all the police had to do was wait a few more moments to see if defendant was going to let them in before entering the home. *Id*. And there is no incentive for police misconduct or a weakening of the Fourth Amendment because the police had a valid arrest warrant and executed it after receiving a credible tip regarding the son's whereabouts. *Id*.

The police also cannot rely on an arrest warrant to apprehend a suspect in a third party's home absent exigent circumstances. *People v Oliver*, 417 Mich 366, 376; 338 NW2d 167 (1983). Defendant claims that her home was a third-party's home, subject to the *Oliver* holding, and therefore, the police needed a search warrant before entering it.

When police officers reasonably believe that the residence they are entering is the residence of the person named in the arrest warrant, a motion to suppress claiming that a search warrant rather than an arrest warrant was required will not succeed. *Payton v New York*, 445 US 573, 603; 100 S Ct 1371; 63 L Ed 2d 639 (1980). When examining whether someone acted reasonably, there is no set formula, so each case is decided based on its own facts. *People v Polidori*, 190 Mich App 673, 676; 467 NW2d 482 (1991).

At an evidentiary hearing, the trial court accepted testimony that defendant's son was a resident of defendant's home. The informant advised police that the felon resided in the home. The informant had all the indicia of credibility. When the trial judge denied the motion to suppress based on defendant's home being that of a third party, he was resolving a factual issue; and a judge's resolution of a factual issue is entitled to deference when it involves the credibility

of witnesses whose testimony conflicts. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). Therefore, the trial court did not abuse its discretion when ruling on this evidentiary matter, and the trial court did not err in refusing to suppress the evidence based on defendant's trailer being a third-party residence.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello